AN ASSIGNMENT IN INSOLVENCY, AND ITS EFFECT UPON PROPERTY AND PERSONS OUT OF THE STATE.

QUESTIONS of private international law, always interesting and always difficult, gain added interest and increased difficulty when they arise between States like the United States of America, which, though sovereign and independent, are bound together into a nation under a National Constitution.[1]

Each citizen in each of the States owes allegiance to the Nation, and has certain rights which may be called his National rights. These National rights cannot rightfully be taken away or infringed upon even by the State of which he is a member. Each citizen, again, owes allegiance to his own State, and has certain rights which may be called his State rights. These rights, also, cannot rightfully be violated or diminished even by the National Government of the United States. It is the duty of the United States to protect its citizen in his National rights, even as against his own State; and it is the duty of the State to protect its citizen in his State rights, even as against the United States.[2]

In administering the laws of the several States relating to insolvency and insolvent debtors, a number of important questions of constitutional law and private international law have arisen, which in their larger aspect involve a consideration of the State rights as compared with the National rights of the citizens of the several States.

It is provided by the United States Constitution, Art. IV., sec. 2, that the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States. And by the Fourteenth Amendment it is further provided that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor deny to any person within its jurisdiction the equal protection of the laws."

In *Ex parte* Virginia,[3] it is said of this provision: "It opens the

[1] See Rorer on Interstate Law, 2d ed., chap. iii. pp. 11–13.

[2] See United States *v.* Cruikshank, 92 U. S. 542 (1875).

[3] 100 U. S. 339, 367 (1879).

courts of the country to every one on the same terms for the security of his person and property; . . . it allows no impediments to the acquisition of property . . . to which all are not subjected."

In Hayes *v.* Missouri [1] it is said: "Class legislation, discriminating against some and favoring others, is prohibited."

In McPherson *v.* Blacker [2] it is held that these constitutional provisions were designed to prevent any person or class of persons from being singled out as a special subject for discriminating or hostile legislation.

In considering the subject of the present article, an assignment in insolvency and its effect upon persons and property out of the State, we shall have occasion to note and comment upon several kinds of favoritism or discrimination practised by some of the courts, by reason of the residence or non-residence of the particular creditors seeking to acquire property by means of attachment.

The effect of an assignment in insolvency on assets abroad was to some extent considered in a very able article by Samuel Williston, Esq., in the HARVARD LAW REVIEW, vol. v. pp. 211–221, and it was there pointed out that according to the law in England all the personal property of the bankrupt debtor, wherever situated, passes to the assignee in bankruptcy, whether appointed in England or elsewhere; that such property passes subject to any lien or attachments which may exist at the time the transfer takes effect; that it is held to be inequitable and unlawful for an English creditor to go abroad after the bankruptcy and attach and acquire property of the bankrupt which would otherwise come to the assignee for distribution; that it is further held in England to be unlawful for a creditor to keep what he has unlawfully acquired, so that the assignee of a bankrupt may either take measures by injunction to prevent an English creditor from proceeding with an attachment made abroad after the bankruptcy, or he may (if it is too late for an injunction), by an action for money had and received, compel the creditor to hand over the proceeds of the attachment. The above rules were all established in England at an early day, most of them prior to 1800, and have been adhered to with consistency to the present time.[3]

The principle or rule which is made the basis of the English

---

[1] 120 U. S. 68 (1886).

[2] 146 U. S. 39 (1892).

[3] See Foote's Private Internat. Jurisprudence, 2d ed., pp. 302–308 (1890).

doctrine is that personal property follows the person of its owner, and is governed, as to its transfer, by the law of his domicile.

In the United States the courts from the outset usually refused to follow this doctrine, and it was early held that personal property of an English bankrupt in the United States might be held by attachment to satisfy the claims of American creditors. The chief reason for departing from the English doctrine seems to have been the hardship there was in compelling American creditors to go to England to share in the winding up of their debtors' affairs. The means of transportation between England and the United States were poor; the relations between the two countries had not been friendly; and so the courts very naturally refused to recognize the fiction that personal property has no locus, and decided that the laws of England had no extra-territorial force and should not as a matter of comity be given effect to the detriment of American creditors, who, presumably, had given credit to the bankrupt on the strength of his personal property located in the United States.[1]

The doctrine thus established in the United States in regard to the property of English bankrupts was very naturally adopted when similar questions arose in regard to the property of an insolvent debtor domiciled in a different State, and it soon became well-established law that for purposes of attachment, personal property has a locus, and that assignments in insolvency under State laws have no extra-territorial effect, at least as against attachments made by citizens of the State where the property is located. If the attachment is made by a creditor from the State where the debtor is domiciled, and the insolvency proceedings are had, a distinction is made by some courts, and such a creditor is denied the rights which are accorded the citizens of the State where the property is situated.

If the attachment is made by a creditor from some State other than that where the insolvency proceedings are had, and other than that where the property is located, a still further distinction is made by some courts, and such a creditor also is denied the rights accorded to citizens of the State where the property is located.

I shall attempt now to trace briefly the rise of these distinctions,

---

[1] Burk *et al. v.* M'Clain, 1 Harris & McHenry (Md.), 236 (1766); Jones *et al. v.* Blanchard *et al.*, cited in 1 Mills Const. Ct. Rep. (S. C.), 284 (1785); Taylor *v.* Geary, Kirby (Conn.), 313 (1787); Wallace *v.* Patterson, 2 Harris & McHenry (Md.), 463 (1790); M'Neil *v.* Colquhoun, 2 Hayward (N. C.), 24 (1797); Harrison *v.* Sterry, 5 Cranch (U. S.), 289 (1809).

and to show how they stand at the present time in view of the existing constitutional provisions above alluded to.

Maryland. — In the case already cited of Burk *v.* M'Clain, decided in Maryland in 1766, the attaching creditor was an Englishman. The distinction was taken that, being an Englishman, he could conveniently enough prove his claim at home under the English bankruptcy proceedings, and it was held that there was no occasion to depart from the English doctrine. The court took pains to state, however, that if the creditor had been a resident of Maryland the rule would have been otherwise.

Connecticut. — In the case of Taylor *v.* Geary,[1] the court made no distinction between domestic and foreign creditors, and held that English as well as American creditors were entitled to attach property in Connecticut, in spite of the English bankruptcy.

This doctrine of equality thus early announced in Connecticut was affirmed and extended in the same State in the year 1876 in the leading case of Paine *v.* Lester.[2] The attaching creditor was a citizen of Rhode Island, the defendant a citizen of Pennsylvania, and the trustee or garnishee a resident of Connecticut. The attachment was held superior to a prior statutory assignment in insolvency in Pennsylvania. The grounds of the decision are that the laws of a State or country have no legal effect beyond the limits of its territory, but are given effect wholly as a matter of comity. This comity will usually be extended if there is no interest of citizens of the State of Connecticut, *or of a sister State*, who are seeking to avail themselves of the protection of the laws of Connecticut, which will be injuriously affected by the exercise of such comity. The court use the following language: "The citizens of all our sister States have, by the Constitution of the United States, the same privileges with our own citizens; and any one of them who has availed himself of the legal remedies furnished by our laws to secure payment of a debt due him, has the same claim to the assistance of our courts that one of our own citizens would have."

Pennsylvania. — In Pennsylvania, in the case of Milne *v.* Moreton,[3] it was held that an English bankruptcy assignment had no effect in Pennsylvania against a subsequent attachment by an American creditor. The attachment was by a citizen of New York. The

---

[1] Kirby (Conn.), 313 (1787).

[2] 44 Conn. 196 (1876).

[3] 6 Binney, 353 (1814).

opinion of the court seems to be that all American creditors, whether resident of Pennsylvania or of other States, stand on an equal footing. English creditors, as it is briefly intimated, would be held bound by the English assignment. The following remark by Chief Justice Tilghman, on page 361, as to the locus of personal property, is worth quoting: "In one sense personal property has locality; that is to say, if tangible, it has a place in which it is situated, and if invisible (consisting of debts) it may be said to be in the place where the debtor resides."

The distinction suggested in this case, that an English creditor might be held bound by an English bankruptcy assignment, was adopted and made law in the case of Mulliken *v.* Aughinbaugh,[1] which was the case of an attachment in Pennsylvania by a Maryland creditor of personal property which had belonged to his insolvent debtor, who was also a resident of Maryland. The court say: "But the case at bar is free of difficulty on this or any other head, the attaching creditor being personally bound by the laws of Maryland, and consequently disabled from gaining an advantage inconsistent with those laws by any proceedings here."

The case of Bagby *v.* Atlantic, Miss. & Ohio R. R. Co.[2] is to the same effect.

The Pennsylvania court, it is said, will protect citizens of Pennsylvania who are not bound by the laws of the place of assignment, but will not aid citizens of that State to act in violation of the law which is binding on them. The constitutional question is noticed briefly, and the case is held not to be affected by the provision that "the citizens of each State shall be entitled to all privileges and immunities of citizens of the several States."[3]

In the case of Long *v.* Gridwood,[4] the Pennsylvania court reaffirm the same doctrine, and extend it to the case of all non-resident attaching creditors, whether residents of the place of assignment or elsewhere. "It matters not" (the court say) "whether the attaching creditor is a resident of the State in which the assignment is made, or of another State foreign to this jurisdiction. If he is a citizen of a foreign State, he can receive no aid here in an effort to obtain a preference in disregard of the assignment. . . . This rule rests on comity between the States, and the only excep-

[1] 1 Pa. 117 (1829).
[2] 86 Pa. St. 291 (1878).
[3] See Bacon *v.* Horne, 123 Pa. St. 452 (1888), to same effect.
[4] 150 Pa. St. 413, 419 (1892).

tion to it is in favor of our own citizens." Citizens of the United States outside of Pennsylvania, as it would seem, stand a poor chance in the courts of Pennsylvania in the acquisition of property by attachment in competition with citizens of that State. The courts of Pennsylvania are apparently not open to all citizens of the United States on the same terms, and a class of persons, to wit, citizens of Pennsylvania, are singled out as a special subject for favorable discrimination. We shall speak of this again further on.

Massachusetts. — In Massachusetts similar results have been reached both in the case of insolvency assignments [1] and also in the case of what are called common law or voluntary assignments; and it is virtually held that a non-resident creditor carries the law of his own State with him and is bound by it wherever he goes; and such a creditor is thereby placed on a different footing from the citizens of the State in which he sues.[2] The latest Massachusetts case on this point is that of Frank *v.* Bobbitt.[3] The court here deliberately announce that citizens of other States will not be granted equal rights with citizens of Massachusetts in the matter of acquiring property by means of attachment. The case was that of a common law assignment with preferences made in North Carolina by a debtor resident there to assignees resident there but not assented to by creditors in such a way as to make it good in Massachusetts, according to the Massachusetts law. A suit was brought in Massachusetts, and an attachment was made by a citizen and resident of Maryland. *Held*, that the assignment, although not valid as against citizens of Massachusetts, should be held valid as against a citizen of Maryland. The attention of the court was not especially called to the constitutional questions involved, no notice was taken of such questions in the opinion, and the case is not indexed as deciding any constitutional point. The converse of this rule — viz., The superior rights of attaching creditors who are citizens of Massachusetts — has been repeatedly recognized and enforced.[4]

In Cunningham *v.* Butler [5] it is stated, in substance, that a State may properly protect its own citizens from the effect of a foreign assignment, but should not protect creditors who are citizens of

---

[1] See Blake *v.* Williams, 6 Pick. 286 (1828).

[2] See Burlock *v.* Taylor, 16 Pick. 335 (1835); Whipple *v.* Thayer, 16 Pick. 25 (1834).

[3] 155 Mass. 112 (1891).

[4] See Taylor *v.* Columbian Insurance Co., 14 Allen, 354 (1867); Faulkner *v.* Hyman, 142 Mass. 53 (1886).

[5] 142 Mass. 47 (1886).

the State where the assignment is made, nor creditors who are citizens of other States.

The following summary of some of the results reached in Massachusetts may prove of interest: —

1. It is unlawful for a creditor who is a citizen of Massachusetts to go out of the State shortly prior to the failure of his debtor, and by attachment secure a lien or claim on property which would otherwise come to the assignee, and such a creditor will be enjoined.[1]

2. It is lawful under the United States Constitution for the Massachusetts court to enjoin such a creditor.[2]

3. It is lawful for such a creditor to sell his claim with the inchoate lien gained by such an unlawful attachment, and keep the proceeds of the sale to his own use.[3]

4. It is lawful for such a creditor, if by means of such an unlawful attachment out of the State, followed by judgment and execution, he has secured payment of his debt in full, to keep the money so collected for his own use.[4]

N. B. — In England, where it is unlawful for a creditor to attach property abroad, it is unlawful for him to keep the proceeds of the attachment.[5]

5. It is lawful for a Massachusetts creditor who has collected part of his debt by means of an unlawful attachment out of the State to prove the balance of his debt and take a dividend thereon.[6]

6. If a Massachusetts creditor who has made an unlawful attachment abroad is in danger of being enjoined, he may protect himself either by selling his claim or by procuring some non-resident creditor to make a second attachment.[7]

7. It is lawful for a Massachusetts creditor to attach *real estate* abroad shortly prior to the failure, even though the insolvency statute in terms embraces such real estate and gives the assignee the right to compel the debtor to execute a deed confirming his title to the same.[8]

---

[1] See Dehon *v.* Foster, 4 Allen, 545 (1862).
[2] See Cole *v.* Cunningham, 133 U. S. 107 (1889).
[3] See Proctor *v.* National Bank of Republic, 152 Mass. 223 (1893).
[4] See Lawrence *v.* Batcheller, 131 Mass. 504 (1881).
[5] See Hunter *v.* Potts, 4 T. R. 182 (1791).
[6] See Batcheller *v.* National Bank of Republic, 157 Mass. 33 (1892).
[7] See Chipman *v.* Manufacturers National Bank, 156 Mass. 147 (1892).
[8] Ibid.

N. B. — In England the courts have lately held that real estate in the colonies passes under English bankruptcy assignments.[1]

8. It is lawful, as it would seem, for a Massachusetts insolvent debtor to convey by way of preference real estate situated in another State.[2]

Maine. — In Maine, the Massachusetts doctrines largely prevail.[3]

In South Boston Iron Co. *v.* Boston Locomotive Works,[4] we find the following *dictum:* —

"Citizens of other States are entitled to bring suit in our courts. Const. U. S., Art. IV. Sec. 2. Being so entitled, they have all the rights of our own citizens in securing their claims by attachment or by arrest of the party indebted. . . . These provisions are the positive law of this State, and courts have no power to dispense with them by the rules of comity. . . . There cannot be two modes of procedure, one for the citizen, and a different one for the stranger within our gates."

After this *dictum* it was fair to suppose that the Maine court was quite certain to adopt what we may call the Connecticut rule of the equal rights of citizens of the United States; but the weight of authority in favor of discrimination was supposed to be too strong, and in the case of Chaffee *v.* Fourth National Bank[5] we find the following announced as the true doctrine: —

"Comity between States is not thus to be extended to the prejudice of our own citizens. . . . We think it clearly implies that while a foreign assignment will not be permitted to defeat the attachment of a domestic creditor, it will have that effect upon foreign creditors. . . . It is the supposed duty of every government to protect its own citizens, — a duty which it does not owe to foreigners. . . . There is certainly force in the objection that such a discrimination is in conflict with that provision of the Federal Constitution which declares that the citizens of each State shall be entitled to all privileges and immunities of citizens of the several States. But there are many cases in which such a discrimination has been sustained, and we are aware of none in which this objection has prevailed."

---

[1] See Callender *v.* Colonial Sec'y of Lagos and Davies (1891), App. Cas. 460; see also Eddy *v.* Winchester, 60 N. H. 63 (1880), where the New Hampshire court assumes that the doctrine of Dehon *v.* Foster applies to real as well as personal property.

[2] See Chipman *v.* Peabody, 34 N. E. 563 (Mass. 1893); see also Schindelholz *v.* Cullum, 55 Fed. Rep. 885 (1893).

[3] See Felch *v.* Bugbee, 48 Me. 9, 18 (1859); Owen *v.* Roberts, 81 Me. 439 (1889).

[4] 51 Me. 585 (1862).

[5] 71 Me. 514, 524 (1880).

New Hampshire. — In New Hampshire the early doctrine was similar to that adopted in Pennsylvania, Maine, and Massachusetts.[1] In Kidder *v.* Tufts,[2] the court say: —

"For the purpose of making an attachment upon property of the defendant here, the plaintiffs may properly be considered subjects of our State government so long as they submit to our jurisdiction and claim the protection of our laws, and we do no more in allowing them the advantages of their superior diligence than to admit them to the full enjoyment of that privilege so clearly expressed in the Constitution of the United States 'that the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States.'"

In the very late case of Sturtevant *v.* Armsby Co.,[3] the New Hampshire court fully adopted the Connecticut rule. In this case the debtor resided in Massachusetts and went into insolvency in Massachusetts. He had property in New Hampshire which was attached after the insolvency by a creditor who was a resident of Illinois. The assignee from Massachusetts sued in equity to enjoin the attachment. *Held*, that under the Fourteenth Amendment to the United States Constitution the resident of Illinois was entitled to protection under the laws of New Hampshire the same as citizens of New Hampshire. It is not certain, the court say, "that the same result would not have been reached if the attaching creditors were residents of the State where the assignment was made. The defendants are not foreigners. They are citizens of Illinois, and as such when in this jurisdiction are entitled, under the Fourteenth Amendment of the Federal Constitution, to the equal protection of our laws. . . . They are now in this jurisdiction. They are here lawfully in court as suitors, and in that character entitled to all the rights the law gives to our own citizens."

New York. — In New York this query of the New Hampshire court as to the rights of creditors who are citizens of the place of assignment has been answered, as we shall see, in the affirmative; and it has been decided and affirmed that in New York, at least, the equal rights of citizens of the United States are recognized and protected, regardless of from what State they come. At the outset the New York court in the case of Holmes *v.* Remsen[4] endeav-

[1] See Saunders *v.* Williams, 5 N. H. 213 (1830); see Sanderson *v.* Bradford, 10 N. H. 260 (1839). See Hoag *v.* Hunt, 21 N. H. 106 (1850). In this case the constitutional question was raised by counsel, but without effect.

[2] 48 N. H. 121, 125 (1868).

[3] 23 Atl. Rep. 368 (1891).

[4] 4 John. Ch. 460 (1820).

ored to adopt and maintain the English doctrine that personal property follows the person of the owner, and is transferred everywhere by a bankruptcy assignment made at the place of his domicile.

But the weight of authority in America against this doctrine was too strong, and the New York court soon fell into line with the courts of the other States in holding that an insolvency assignment has no extra-territorial effect as against attaching creditors.[1]

In the case of Johnson *v.* Hunt,[2] Judge Cowen, after noticing certain cases which hold that an insolvent assignment is to be held good as against citizens of the State where it is made, says: "Keeping our eye steadily upon the true principle, I apprehend we shall find that in whatever way the party honestly acquires title to the bankrupt's property situated in a foreign state, his citizenship has nothing to do with the question."

Hibernia Bank *v.* Mechanics, etc., Bank[3] was the case of an attachment in New York by a Louisiana creditor of assets which were claimed by a Louisiana syndic or assignee in insolvency. It was held that the court would accord the same rights to citizens of the State where the insolvency proceedings are had as it would to citizens of its own and of other States.

See also same case on appeal, Hibernia National Bank *v.* Lacombe,[4] where the court say: "The plaintiff, as we have seen, although a foreign creditor, is rightfully in our courts pursuing a remedy given by our statutes. It may enforce that remedy to the same extent and in the same manner and with the same priority as a citizen. Any other construction would make the permission of the statute a form without benefit; a formality and not matter of substance; a mere delusion. Once properly in court and accepted as a suitor, neither the law nor court administering the law will admit any distinction between the citizen of its own State and that of another. Before the law and in its tribunals there can be no preference of one over the other."

In a case entitled In re Waite,[5] the new doctrine is well and briefly stated to be that on grounds of comity the titles of foreign statutory assignees are recognized and enforced in New York; but

---

[1] See Abraham *v.* Plestoro, 3 Wend. 538 (1829); Hoyt *v.* Thompson's Executor, 19 N. Y. 207 (1839); Guillander *v.* Howell, 35 N. Y. 657 (1866); Kelly *v.* Crapo, 45 N. Y. 87 (1871).

[2] 23 Wend. 86 (1840).

[3] 21 Hun, 166 (1880).

[4] 84 N. Y. 367 (1881).

[5] 99 N. Y. 433 (1885).

this is done only when it can be done without injustice to New York citizens, and without prejudice to the rights of creditors pursuing their remedies in New York by attachments made under New York statutes.

The New York courts have made their doctrines consistent and harmonious by holding in the case of Warner *v.* Jaffray[1] that under the United States Constitution a citizen of New York who is also a citizen of the United States cannot be enjoined in New York from acquiring property by judicial proceedings in another State by methods which are regular and lawful in the State where the same are had.

It is interesting to contrast the results arrived at in New York, Connecticut, and New Hampshire with those reached in Maine, Massachusetts, and Pennsylvania.

In Lemon *v.* The People,[2] Denio, J., says: —

"The Constitution declares that the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States (Art. IV. Sec. 2). No provision in that instrument has so strongly tended to constitute the citizens of the United States one people as this. Its influence in that direction cannot be fully estimated without a consideration of what would have been the condition of the people if it or some similar provision had not been inserted. Prior to the adoption of the Articles of Confederation the British colonies on this continent had no political connection, except that they were severally dependencies of the British Crown. . . . When, in consequence of the Revolution, they severally became independent and sovereign States, the citizens of each State would have been under all the disabilities of alienage in every other, but for a provision in the compacts into which they entered, whereby that consequence was avoided. . . . The Constitution organized a still more intimate Union, constituting the States, for all external purposes and for certain enumerated domestic objects, a single nation; but still the principle of state sovereignty was retained as to all subjects except such as were embraced in the delegations of power to the General Government or prohibited to the States. . . . The provision conferring rights of citizenship upon the citizens of every State in every other State was inserted substantially as it stood in the Articles of Confederation. The language is that they shall have the privileges and immunities of citizens in the several States. In my opinion, the meaning is that in a given State every citizen of every other State shall have the same privileges and immunities — that is, the same rights — which the citizens of

[1] 96 N. Y. 248 (1884).

[2] 20 N. Y. 562 (1860).

that State possess. . . . They can hold property by the same titles by which every other citizen may hold it. and by no other. . . . The position that a citizen carries with him into every State into which he may go the legal institutions of the one in which he was born, cannot be supported. A very little reflection will show the fallacy of the idea."

Illinois. — In Illinois the case of Rhawn *v.* Pearce,[1] decided in 1884, gave promise that the Illinois court was about to come into line with Connecticut, New Hampshire, and New York, and adopt a broad and consistent constitutional doctrine.

The language of the New York Court in Hibernia National Bank *v.* Lacombe was cited with approval, and it was held that a statutory insolvent assignment in Pennsylvania was inoperative in Illinois against a subsequent attachment by a citizen of Pennsylvania. But this hope was destined to disappointment, at least so far as voluntary or common law assignments are concerned; and in three recent cases, May *v.* First National Bank,[2] Woodward *v.* Brooks,[3] and Juillard *v.* May,[4] it was held, consistently with what has since been held in Massachusetts in Frank *v.* Bobbitt, *supra*, that a non-resident creditor has not the same rights as an Illinois creditor; and the doctrine by which a foreign common law assignment is inoperative, in Illinois, as against Illinois creditors, does not apply so far as creditors from other States are concerned. The constitutional objections, as is usual, are ignored rather than considered and met. The reason for this inconsistency as to common law assignments seems to have been this: It had become settled in Illinois, contrary to the weight of authority elsewhere, that foreign common law assignments should have no effect in Illinois as against Illinois creditors, who were to be paid in full before any assets should be allowed to go out of the State to an assignee for the benefit of creditors not citizens of Illinois. See Heyer *v.* Alexander;[5] Henderson *v.* Schaas.[6] But when it came to going so far from the doctrines established elsewhere upon the effect of common law assignments as to hold that they should be inoperative in Illinois as regards citizens of other States, the courts were reluctant to take the step, and so made a distinction between common law insolvency assignments and statutory insolvency assignments, and as regards common law assignments refused to apply the doctrine of equal

---

[1] 110 Ill. 350.
[2] 122 Ill. 551 (1887).
[3] 128 Ill. 222 (1889).
[4] 130 Ill. 87 (1889).
[5] 108 Ill. 385 (1884).
[6] 35 Ill App. 156 (1889).

rights under the Constitution. See Walton *v.* Detroit, etc., Mills.[1]

Minnesota. — The courts in Minnesota seem disposed to follow the Connecticut, New York, and New Hampshire doctrine.

In Jenks *v.* Luddin,[2] the court say: "We think we may lay it down as now reasonably well settled that when once in court and accepted as a suitor, neither the law nor the court administering it will make any distinction between citizens of their own State and those of another, but that a citizen of one State, rightfully in court, pursuing a remedy given by the laws of another State, may enforce that remedy to the same extent and in the same manner and with the same priority of lien as a citizen of the forum."

Louisiana. — It seems to be settled in Louisiana that the courts of that State will do more for citizens of Louisiana than they will for citizens of other States, especially where the non-residents are citizens of the State where the assignment has been made.[3]

South Carolina. — In South Carolina the doctrine of equal rights has been approved, and seems likely to prevail. See *Ex parte* Dickinson,[4] which was the case of a voluntary or common law assignment in New York, with preferences. This assignment was held invalid in South Carolina, as being in violation of a South Carolina statute. The attaching creditors were citizens, some of New York, and some of Connecticut. It was held that they had the same rights as citizens of South Carolina. The language of the court in Hibernia National Bank *v.* Lacombe[5] is cited and approved.

Iowa. — In Moore *v.* Church,[6] a voluntary assignment in New York with preferences was held invalid as against a subsequent attachment of real estate in Iowa, even though the attaching creditor was a citizen of New York. The doctrine that a citizen of a State is bound by its laws even when out of the State, and hence is to be treated differently from citizens of the place which he happens to be visiting, is not adopted.

Wisconsin. — The courts in Wisconsin seem disposed to adopt the doctrine of discrimination, or, as it may be called, of unequal

---

[1] 37 Ill. App. 264 (1889).

[2] 34 Minn. 482, 486 (1886).

[3] See Olivier *v.* Townes, 2 Martin N. S. 93 (1824); The United States *v.* Bank of the United States, 8 Robinson, 414 (1844); Richardson *v.* Leavitt, 1 La. An. 430 (1846).

[4] 29 So. Car. 453 (1886).

[5] 84 N. Y. 367.

[6] 70 Ia. 208 (1886).

rights. In the very late case of Gilman *v.* Ketcham,[1] it was held that the title of a receiver appointed in New York was superior to a subsequent attachment of personal property in Wisconsin, the attachment being made by a New York creditor. It was assumed that the rule would have been otherwise in case the attachment had been by a Wisconsin creditor. The Pennsylvania and Illinois cases were chiefly relied on. The constitutional question was not discussed.

Missouri. — In Einer *v.* Beste,[2] the citizenship doctrine was considered, and the rule that citizens of the State where a statutory assignment is made are bound by it even when abroad, was adopted. Citizens of all other States were considered to have equal rights with citizens of Missouri. The constitutional point was raised in argument, but was not discussed in the opinion of the court. The same discrimination was made in the case of a common law assignment.[3] If a common law assignment is good according to the law of the State where it is made, and is also good according to Missouri law, it will take full effect in Missouri.[4]

New Jersey. — Special favoritism is shown by New Jersey courts towards citizens of New Jersey. If a foreign common law assignment is good according to the law of the State where made, it is good in New Jersey as against citizens of the State where it is made, and also as against citizens of all other States except New Jersey. It is said that a New Jersey court will not send citizens of New Jersey out of the State to collect their debts if there are assets in the State.[5] The New Jersey cases have had considerable influence in other States, and, as we shall show further on, have had some effect upon the United States Supreme Court. In New Jersey they have one law for the citizens of the State, and another law for the stranger within their gates. In Boehme *v.* Rall[6] it was in effect held in New Jersey that while it is true that a person is bound by the law of his domicile, when acquiring by attachment personal property situated in another State, he is not bound by the law of his domicile when disposing of personal property so situated.

---

[1] 54 N. W. 395 (1893).

[2] 32 Mo. 240 (1862).

[3] See Thurston *v.* Rosenfield, 42 Mo. 474 (1868).

[4] Askew *v.* La Cygne Bank, 83 Mo. 369 (1884).

[5] See Moore *v.* Bonnell, 2 Vroom, 90 (1864); Bentley *v.* Whittemore, 19 N. J. Eq. 462 (1868); Green *v.* Wallis Iron Works, 49 N. J. Eq. 54 (1891).

[6] 26 Atl. 832 (1893).

In the one case the *lex rei sitae* does not govern, and in the other it does.

Ohio. — The citizenship doctrine was considered in Ohio as early as 1839, and it was then suggested that under the Constitution the law should be the same for the stranger and for the citizen, — that justice should not be meted out with different measures.[1]

Vermont. — In Ward *v.* Morrison,[2] a citizen of New York sued and attached by trustee process in Vermont. The court say: "By the United States Constitution, the citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States. Art. IV. Sec. 2. And if we should deny to the plaintiffs the use of our courts to enforce their legal rights . . . as fully as they may be used by the citizens of Vermont for that purpose, there might be ground to complain of an infraction of this provision of the Constitution."

In Hanford *v.* Paine,[3] the court say in substance that citizens of Vermont ought not to have any greater advantage in the courts of Vermont in the way of attachment than citizens of other States.

Idaho. — I give this State the last place, because it is from the Idaho court that we have one of the latest as well as one of the best statements of the doctrine of equal rights. The case is that of Barnett *v.* Kinney.[4] A resident of Utah made a common law assignment, with preferences. There was personal property in Idaho as well as in Utah. The insolvent laws of Idaho forbade assignments with preferences. A Minnesota creditor sued and attached in Idaho. It was held by a majority opinion, first, that the Idaho statute forbidding assignments with preferences applies to foreign as well as to domestic assignments; second, that resident and non-resident creditors have equal rights in the matter of acquiring property by attachment.

Sweet, J., says: —

"The attachment laws of this Territory give no preferences as between resident and non-resident attaching creditors. Sec. 2, Art. IV. of the Constitution reads as follows: —

"'The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.'

"We must conclude that the non-residence of the attaching creditor in this case could not in any manner prejudice his rights, and that he

---

[1] See Sortwell *v.* Jewett, 9 Ohio, 181 (1839).

[2] 25 Vt. 598 (1853).

[3] 32 Vt. 443, 457 (1860).

[4] 2 Idaho, 706 (1890).

was entitled to the same privileges that under the same circumstances would be accorded to any citizen of Idaho.

"When once a citizen has been accepted by any court of the United States as a suitor, it does not seem to be in accordance either with the principles of justice or with common fairness, or with common honesty between man and man, to question him as to the particular State in which he may reside, and then give or refuse him what the court would deem to be justice if the suitor were a citizen of our own State, but deny him this supreme right if the fact is developed that he is a citizen of another State.

"We do not think the court justified in asking the citizen who seeks the beneficial protection of its laws whence he came, with a view to administering the law accordingly."

United States Circuit Courts. — We find a few cases in the Circuit Courts where the comparative rights of residents and non-residents are considered.

One such case is Atherton *v.* Ives,[1] where it is stated that no distinction should be made between home creditors and non-resident ones: "We think such a distinction should never be drawn by a court, unless compelled to do so by legislative will clearly expressed. It may be that the legislature of a State has the power to exercise such a 'patriarchal and provident sovereignty,' but this court will not assume such is the legislative will."

In Halstead *v.* Straus,[2] Mr. Justice Bradley recognized and followed the New Jersey doctrine that in New Jersey greater rights are to be accorded to citizens of New Jersey than are allowed to citizens of other States.

This case should be compared with Faulkner *v.* Hyman.[3]

United States Supreme Court. — In the early case of Harrison *v.* Sterry,[4] English creditors were allowed equal rights with American creditors in the way of attachment of assets of an English bankrupt.

In Green *v.* Van Buskirk,[5] the court say: —

"We cannot see why, if Illinois in the spirit of enlightened legislation concedes to the citizens of other States equal privileges with her own in her foreign attachment laws that the judgment against the personal estate, located in her limits, of a non-resident debtor which a citizen of New York lawfully obtained there, should have a different effect given to

[1] 20 Fed. Rep. 894 (1884).
[2] 32 Fed. Rep. 279 (1887).
[3] 142 Mass. 53.
[4] 5 Cranch, 289 (1809).
[5] 7 Wall. 139, 151 (1868).

it under the provisions of the Constitution and the laws of Congress because the debtor against whose property it was recovered happened also to be a citizen of New York."

In Paul *v.* Virginia,[1] it is said in substance that the United States Constitution gives to citizens of each State the same freedom possessed by the citizens of those States in the acquisition and enjoyment of property, and it secures to them the equal protection of their laws.

Cole *v.* Cunningham[2] presented a question of the National rights as against the State rights of residents of Massachusetts. The question to be determined was what limits, if any, do the Constitution and laws of the United States place upon the power of a State in dealing with one of its own citizens who has made an attachment in another State. The majority of the court held in this case that the power of a State is such that it may prevent its citizens from doing in another State what it is lawful for them to do there; that it may prevent their acquiring property by attachment in another State by modes which are there lawful both for residents and non-residents; that a distinction is to be made between attachments and judgments; and that the title or inchoate right gained by an attachment may be taken away, while the title or completed right gained by a judgment cannot be interfered with. Allusion was made, on pages 128, 129, to the conflicting views which exist as to the comparative rights of creditors who are residents and creditors who are not residents of the State where property is located.

Notice was also taken of the fact that citizens of the State where the assignment was made are by many courts held to be bound by the assignment.

In Reynolds *v.* Adden,[3] it was held that the courts of Louisiana could, if they so desired, discriminate between creditors coming from the State where insolvency proceedings were had, and those coming from elsewhere. The constitutional question is not discussed. It is assumed that a creditor carries the law of his domicile with him when he goes abroad to make an attachment.

One of the latest cases on the subject (which happens to be a case in the United States Supreme Court) leaves it still doubtful what constitutional doctrine will be finally adopted by the

[1] 8 Wall. 180 (1868). [2] 133 U. S. 107 (1889). [3] 136 U. S. 348 (1889).

United States Supreme Court. I refer to the case of Barnett *v.* Kinney.[1] The case came up on appeal from the State court of Idaho.[2] The decision of the Idaho court was reversed on the ground that the Idaho statute did not apply to foreign assignments, and so the assignment made in Utah was good in Idaho. In this view of the case it was not necessary to decide as to the comparative rights of residents and non-residents, and what is said on this point must be considered merely as *dicta*. It is important to notice, however, that the United States Supreme Court shows an inclination in this case, as in Cole *v.* Cunningham, to adopt what we have called the Pennsylvania-New-Jersey-Massachusetts doctrine, instead of the Connecticut-New-Hampshire-New-York-Idaho doctrine.

It is to be hoped that when the United States Supreme Court comes to an actual decision upon this important constitutional question, we shall have all the cases upon the subject considered, especially those that support the doctrine of equal rights.

Conclusion. — I have sought in this article to call attention to the fact that for many years in different parts of the country, now here, now there, able lawyers and learned judges have been considering the constitutional questions which have arisen in connection with insolvency assignments. Where the matter has been treated in a narrow and so to speak local manner, the doctrine of discrimination has been favored. Where the matter has been looked at broadly, and the provisions of the Constitution fairly examined, the doctrine of equal rights has been adopted. Too often the constitutional provisions have been altogether lost sight of. Is it not desirable that these questions should be considered, and if the courts of some of the States are acting in violation of the United States Constitution, that this should be known and put a stop to?

Considerations of space have prevented me from discussing a number of questions connected with insolvency assignments which are every day gaining added importance. One of these is the proper effect of a statutory insolvency assignment when made outside of the debtor's domicile.[3]

---

[1] 147 U. S. 476 (1892).

[2] See report of case *supra*.

[3] See Chipman *v.* Peabody, 34 N. E. 563 (Mass.) (1893).

In England a debtor may be put into bankruptcy if he has a place of business in England, no matter where his domicile may be.[1]

In Massachusetts under a recent statute certain foreign corporations doing business in Massachusetts may be put into insolvency in Massachusetts, and the assignee will take such assets as are in the State.

The question at once arises, What are assets within the State? Are book accounts such assets, where the claims are against parties living in Massachusetts, and how is it when the claims are against parties living out of Massachusetts?

Hollis R. Bailey.

---

[1] See *Ex parte* McCullock, 14 Ch. D. 716 (1880).